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January 19, 1993

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: MM Docket No. 92-259
Caribbean Communications Corp.
d/b/a St. Thomas-St. John Cable TV
Reply Comments

Dear Ms. Searcy:

Enclosed herewith on behalf of Caribbean Communications Corp. d/b/a St. Thomas-St. John Cable TV ("St. Thomas-St. John"), is an original and four (4) copies of its Reply Comments.

Should any questions arise in connection with this matter, kindly communicate directly with the undersigned.

Respectfully submitted,

Howard J. Barr

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re	)	
	)	
IMPLEMENTATION OF THE CABLE TELEVISION CONSUMER PROTECTION AND COMPETITION ACT OF 1992	)	**MM Docket No. 92-259**
	)	
BROADCAST SIGNAL CARRIAGE ISSUES	)	

REPLY COMMENTS OF CARIBBEAN COMMUNICATIONS CORP.
D/B/A ST. THOMAS-ST. JOHN CABLE TV

Caribbean Communications Corp. D/B/A St. Thomas-St. John Cable TV ("St. Thomas-St. John"), hereby submits its Reply Comments in the above-referenced proceeding. The following is shown in support thereof:

St. Thomas-St. John focused primarily on two issues in its Comments in this proceeding: the definition of a television market in non-ADI areas and the applicability of retransmission consent rights to the retransmission of out of market signals. The comments filed on these issues overwhelmingly support the positions asserted by St. Thomas-St. John.

With respect to television market definitions, St. Thomas-St. John proposed that, insofar as the various island territories and possessions of the United States are concerned, a broadcast station's television market should be the particular island or island group concerned. That is, the United States Virgin Islands would comprise one market, Puerto Rico another, etc. The comments filed on this issue support St. Thomas-St. John's proposal. For example, Malrite Communications Group, Inc., which operates two television stations in Puerto Rico, suggests that

the Commonwealth of Puerto Rico should constitute an ADI unto itself. Comments of Malrite at pp. 2-3. The Puerto Rico Cable TV Association makes the same proposal in its comments. Comments of Puerto Rico Cable TV Association at p.7. Considering the unanimity of the comments, the territorial concept proposed by St. Thomas-St. John, and others, should be adopted.

Similarly, the majority of comments support St. Thomas-St. John's comments concerning the retransmission consent rights of distant non-superstation television signals, particularly as applied to the retransmission of distant network signals to otherwise unserved areas. See Comments of: Puerto Rico Cable TV Association, PrimeTime 24, and the U.S. Copyright Office. The Act's retransmission consent provisions should not apply to the retransmission to and and by cable system operators of the signal of a broadcast station owned or operated by, or affiliated with, a broadcast network, if the households ultimately receiving the signals have no other available source for that network's programming.

For example, ABC is the only network with an affiliate on the United States Virgin Islands. The islands are unserved with respect to ABC and NBC programming. St. Thomas-St. John imports CBS and NBC affiliates via satellite to satisfy the viewing needs and demands of its subscribers. St. Thomas-St. John should be able to continue its unfettered carriage of these signals, without the need to obtain the consent of the originating station.

The National Basketball Association and the National Hockey League (the "Leagues") on the other hand, concur with the Commission's tentative conclusion that out of market retransmission of a commercial television station's signal should occur only pursuant to that station's consent. The Leagues conclude that the only exceptions to this rule are set forth in section 325(b)(2) of the Act, and that even these exceptions should be narrowly construed. The Leagues, however, ignore the negative public policy implications that could realistically result from adoption of the rule.

If the Commission's tentative conclusion is adopted, literally hundreds of thousands of viewers could be denied access to this country's most watched programming; programming that cable subscribers and off air viewers alike have come to rely and depend upon for their entertainment, news, sports, and information. See Comments of: St. Thomas-St. John at p.6; PrimeTime 24 at p.2; Puerto Rico Cable TV Association at p.2 n.2. This result is directly contrary to the basic precepts of the Act, i.e., to "promote the availability to the public of a diversity of views and information ..." Section 2(b)(1). "Accordingly, section 325, as amended by the 1992 Cable Act, must be interpreted in favor of continued access to network programming for all." Comments of PrimeTime 24 at p.6.

The Leagues also fail to address the compulsory copyright implications of the Commission's tentative conclusion. Congress stated emphatically that "[n]othing in this Section shall be

construed as modifying the compulsory copyright license established in Section 111 of Title 17 ..." Section 325(b)(6). The U.S. Copyright Office has opined, however, that the retransmission consent provisions in general, and the Commission's interpretation with respect to the retransmission of distant non-superstation signals in particular, do modify the cable compulsory license. Comments of the U.S. Copyright Office at pp.7-9, 12-13. Given Congress' intent that the provision on retransmission consent not be construed as modifying the compulsory license and the Copyright Office's opinion that the Commission's proposed rule with respect to distant non-superstation signals will indeed modify the compulsory license, the Commission should refrain and indeed is statutorily barred from adopting the rule as proposed.

Similarly, the Leagues (and the Commission) fail to address the unexplained disparate treatment as between home satellite dish owners residing in unserved areas, who enjoy and will continue to enjoy unfettered access to satellite delivered network programming, on the one hand, and cable subscribers residing in unserved areas, who previously but may no longer enjoy such unfettered access, on the other. Disparate treatment of otherwise similarly situated persons must be accompanied by "a reasoned justification in terms of some public purpose." See Beach Communications, Inc. v. FCC, 965 F.2d 1103 (D.C. Cir. 1992). No reasoned justification has yet been provided. Cable systems such as St. Thomas-St. John, and perhaps more importantly, their

subscribers, should be treated by this Commission on the same basis as similarly situated home satellite dish owners. Id.

CONCLUSION

St. Thomas-St. John urges the Commission to adopt its proposals that non-ADI markets, such as the United States Virgin Islands, be considered television markets unto themselves for must carry purposes. St. Thomas-St. John also urges the Commission to consider its alternative must carry proposals concerning English language and non-English language television broadcast stations placing Grade B contours over communities in non-ADI areas. Finally, St. Thomas-St. John urges the Commission to reject its tentative conclusion concerning out of market retransmission of commercial television signals.

Respectfully submitted,

CARIBBEAN COMMUNICATIONS CORP.
D/B/A ST. THOMAS-ST. JOHN CABLE TV

By _____
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